PENDAFTAR PERTUBUHAN A

v.

DATUK JUSTINE JINGGUT

FEDERAL COURT, PUTRAJAYA B
ABDULL HAMID EMBONG FCJ
SURIYADI HALIM OMAR FCJ
AHMAD MAAROP FCJ
ZALEHA ZAHARI FCJ
SULONG MATJERAIE FCJ C
[CIVIL APPEAL NO: 01-4-03-2012(W)]
4 JULY 2012

JURISDICTION: *Courts - Judicial power - Deregistration of political party by Registrar of Societies (ROS) under s. 13(1)(c)(ix) of Societies Act 1966 - Decision based on subjective opinion of ROS - Whether court could substitute subjective opinion of ROS - Whether court excluded from going into merits of dispute between members of political party - Societies Act 1966, s. 18C* D

UNINCORPORATED ASSOCIATIONS: *Societies - Political party - Deregistration by Registrar of Societies (ROS) under s. 13(1)(c)(ix) of Societies Act 1966 - Whether deregistration consequential to non-compliance with s. 16(1) notice - Whether ROS satisfied of existence of dispute - Whether subjective test applied - Societies Act 1966, ss. 13(1)(c)(ix), 13(2), 16(1)* E F

A leadership crisis arose in Parti Kebangsaan Sarawak ('SNAP'), a political society registered under the Societies Act 1966 ('the Act') between two groups, one led by the President and the other led by the Deputy President. The issue arose when the Deputy G President, during the absence of the President, called for a Central Executive Committee ('CEC') meeting and subsequently convened the National Council Meeting. The President subsequently suspended the Deputy President and the decision was confirmed by another CEC meeting. The crisis led to the issuance of a H notice by the Registrar of Societies ('the ROS') under s. 16(1) of the Act, which *inter alia* stated that the ROS was of the opinion that a dispute had occurred among the office bearers of SNAP, as a result of which he was not satisfied as to the identities of the persons who had been properly constituted as the office I bearers of SNAP. The ROS subsequently issued another notice, under s. 13(2) of the Act, where a notification on his proposal to cancel the registration of SNAP was given unless SNAP could

furnish reasons within a month why it should not be de-registered. Upon the failure by the party to settle its crisis, the ROS issued his decision to cancel the registration of SNAP under s. 13(1)(c)(ix) of the Act. The President and the respondent thus filed an application in the High Court, for: (i) an order of *certiorari* to quash the decision of the ROS in cancelling the registration of SNAP; and (ii) a declaration that the decision of the ROS in cancelling the registration of SNAP was void and of no effect. The respondent's application was dismissed by the High Court. However, the respondent's appeal to the Court of Appeal was allowed and the decision of the High Court was set aside. Hence this appeal by the ROS on the following questions of law, *inter alia*: (i) whether the ROS had any power under s. 16(1) of the Act to determine the validity of the meetings before he decided that a dispute had arisen pertaining to the identity of the office-bearers; (ii) whether the court, having considered the facts of the case objectively, could decide that there was no dispute pertaining to the identity of the office-bearers to enable the ROS to issue the notice under s. 16(1) of the Act; (iii) whether under s. 16 read with s. 13(2) of the Act, the ROS needed to act mechanically or whether he had any discretion to cancel the registration of a society if the conditions in s. 16(1) had not been satisfied; and (iv) whether, under s. 16 read with s. 13 of the Act, the ROS was required to give any reasons for his decision to cancel the registration of a society.

Held (allowing appeal with costs)
Per Abdull Hamid Embong FCJ delivering the judgment of the court:

(1) This appeal involved the statutory interpretation of s. 16 and s. 13 of the Act. On a literal interpretation of s. 16(1) of the Act, the ROS is not empowered to inquire into the validity of the meetings in order to form an opinion regarding the existence of a dispute. The ROS merely needs to act on the documents presented to him to objectively decide if a dispute had arisen. Once he is satisfied, on a subjective test, that a dispute had in fact occurred, he may straight away form such an opinion. The word 'opinion' as found in s. 16(1) entails a subjective evaluation by the ROS. He forms the opinion based on the documents and information before him. He need not inquire into the meetings to determine if they were in compliance with SNAP's constitution. (para 29)

(2) Hence, the role of the ROS is one of non-interference in a dispute situation involving a political society, such as SNAP. Section 16(1) of the Act thus has to be given a narrow interpretation limiting the scope of the duty of the ROS to that of only giving an opinion to the existence of a dispute and directing that society to settle the dispute by serving a notice to it. In the event of a non-compliance of that notice, the ROS may deregister the society under s. 13(1)(c)(ix) of the Act. (para 31)

(3) For the court to go behind the opinion stated by the ROS and make its own finding based on the factual background on the validity of the dispute, would usurp the limited powers of the ROS under s. 16(1). The court would then have to substitute the subjective opinion of the ROS. In other words, it would take over the role of the ROS, which the court could not do. In any event, s. 18C of the Act clearly excludes the jurisdiction of the courts from going into the merits of any disputes between members of a political party. Hence, the court was clearly restrained from questioning the decisions made by the disputing parties of a political party at their respective meetings. (paras 36 & 37)

(4) The ROS merely gave SNAP an ultimatum to settle the dispute or face the peril of cancellation under s. 13(1)(c)(ix). The ROS having been satisfied that there has been a non-compliance of his notice, could act under s. 13(1)(c)(ix) of the Act to cancel the registration of SNAP. Although it is an exercise of discretion by the ROS, the discretion must be exercised within the confines of the law. It is in this regard that the ROS had to act mechanically within his mandate under s. 13(1)(c) of the Act. (paras 44, 46 & 47)

(5) Even if the discretion is an absolute one, the basic proposition is that "the courts do not probe into the merits of a discretionary action or decision. The courts will not question a discretionary decision on such grounds as to whether it was correct or proper, right or wrong. Also the courts will not substitute its own discretion for that of a concerned authority". In the circumstances, the court disagreed with the Court of Appeal in finding that the ROS had in this instance acted arbitrarily. (para 47)

(6) The decision to deregister SNAP was consequential to the failure of SNAP to comply with the s. 16 notice. There was no requirement for the ROS to conduct any formal hearing before exercising his power under s. 13 of the Act as it was not a judicial adjudication process. There was no evidence of any bad faith or bias against SNAP when the ROS acted under s. 13(1)(c)(ix). The s. 16(1) notice was clear in its terms and the only prejudice suffered by SNAP was due to its own doing, ie for not complying with the conditions specified in the notice. (paras 52 & 53)

(7) There was no merit in the respondent's argument that the decision of the ROS had adversely affected his fundamental rights under arts. 8 and 10 of the Federal Constitution. This was because, firstly, the respondent had never pleaded the issue and secondly, this case had nothing to do with equality before the law or on freedom to form associations. The matter related solely to the power of the ROS and the circumstances where he may cancel the registration of a society. (paras 54 & 55)

Bahasa Malaysia *Translation Of Headnotes*

Suatu krisis pucuk pimpinan timbul dalam Parti Kebangsaan Sarawak ('SNAP'), sebuah pertubuhan yang didaftarkan di bawah Akta Pertubuhan 1966 ('Akta'), antara dua kumpulan, satu dipimpin oleh Presiden dan satu lagi di bawah pimpinan Timbalan Presiden. Isu timbul apabila Timbalan Presiden, semasa ketiadaan Presiden, memanggil mesyuarat Jawatankuasa Eksekutif Pusat ('JEP') dan kemudiannya mengadakan Mesyuarat Majlis Nasional. Presiden kemudian menggantung Timbalan Presiden dan keputusan tersebut disahkan oleh satu lagi JEP. Krisis ini menjurus kepada pengeluaran notis oleh Pendaftar Pertubuhan ('Pendaftar') di bawah s. 16(1) Akta, yang antara lain, menyatakan bahawa Pendaftar berpendapat bahawa suatu pertikaian telah berlaku antara pemegang-pemegang jawatan di dalam SNAP, yang akibatnya beliau tidak berpuas hati tentang identiti orang yang telah dilantik secara wajar sebagai pemegang jawatan dalam SNAP. Pendaftar kemudian mengeluarkan satu lagi notis, di bawah s. 13(2) Akta, yang mana satu notis cadangan untuk pembatalan pendaftaran SNAP diberikan kecuali jika SNAP boleh memberikan alasan-alasan dalam tempoh satu bulan mengapa ia tidak boleh dibatalkan pendaftarannya. Atas kegagalan parti itu menyelesaikan krisisnya, Pendaftar mengeluarkan keputusan untuk membatalkan pendaftaran SNAP di bawah s. 13(1)(c)(ix) Akta. Presiden dan

responden oleh itu memfailkan permohonan di Mahkamah Tinggi, untuk: (i) perintah certiorari untuk membatalkan keputusan Pendaftar dalam membatalkan pendaftaran SNAP; dan (ii) suatu deklarasi bahawa keputusan Pendaftar dalam membatalkan pendaftaran SNAP adalah batal dan tidak mempunyai kesan. Permohonan responden ditolak oleh Mahkamah Tinggi. Walau bagaimanapun, rayuan responden ke Mahkamah Rayuan dibenarkan dan keputusan Mahkamah Tinggi diketepikan. Maka rayuan ini oleh Pendaftar atas persoalan undang-undang yang berikut, antara lain: (i) sama ada Pendaftar mempunyai apa-apa kuasa di bawah s. 16(1) Akta untuk memutuskan kesahan mesyuarat sebelum memutuskan bahawa pertikaian telah timbul berkaitan dengan identiti pemegang-pemegang jawatan; (ii) sama ada mahkamah, setelah mempertimbangkan fakta-fakta kes secara objektif, boleh memutuskan bahawa tidak ada pertikaian berkaitan dengan identiti pemegang-pemegang jawatan untuk membolehkan Pendaftar mengeluarkan notis di bawah s. 16(1) Akta; (iii) sama ada di bawah s. 16(1) dibaca bersama s. 13(2) Akta, Pendaftar perlu bertindak secara mekanikal atau sama ada beliau mempunyai budi bicara untuk membatalkan pendaftaran pertubuhan jika syarat-syarat di bawah s. 16(1) tidak dipenuhi; dan (iv) sama ada di bawah s. 16(1) dibaca bersama s. 13 Akta, Pendaftar diperlukan memberikan apa-apa alasan bagi keputusannya untuk membatalkan pendaftaran pertubuhan.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Abdull Hamid Embong HMP menyampaikan penghakiman mahkamah:

(1) Rayuan ini melibatkan pentafsiran statut s. 16 dan s. 13 Akta. Atas tafsiran harfiah s. 16(1) Akta, Pendaftar tidak mempunyai kuasa untuk mempersoalkan kesahan mesyuarat-mesyuarat tersebut untuk membentuk pendapat berkaitan kewujudan pertikaian. Pendaftar hanya perlu bertindak berdasarkan dokumen-dokumen yang dikemukakan kepadanya untuk memutuskan secara objektif sama ada timbulnya pertikaian. Setelah beliau berpuas hati, atas ujian subjektif, bahawa sememangnya terdapat pertikaian, beliau boleh terus membentuk pendapat tersebut. Perkataan 'pendapat' yang terdapat di dalam s. 16(1) menggambarkan penilaian subjektif oleh Pendaftar. Beliau membentuk pendapat berdasarkan kepada dokumen-dokumen dan maklumat di hadapannya. Beliau tidak perlu menyiasat tentang mesyuarat-mesyuarat tersebut untuk memutuskan bahawa ia mematuhi perlembagaan SNAP.

(2) Maka, peranan Pendaftar adalah bahawa beliau tidak boleh campur tangan dalam situasi pertikaian yang melibatkan pertubuhan politik, seperti SNAP. Seksyen 16(1) Akta oleh itu perlu diberikan pentafsiran yang sempit yang menghadkan skop kewajipan Pendaftar kepada hanya memberikan pendapat tentang kewujudan pertikaian dan mengarahkan pertubuhan tersebut menyelesaikan pertikaian tersebut dengan memberikan notis kepadanya. Jika terdapat ketidakpatuhan notis tersebut, Pendaftar boleh membatalkan pendaftaran pertubuhan tersebut di bawah s. 13(1)(c)(ix).

(3) Bagi mahkamah mempersoalkan pendapat yang dinyatakan oleh Pendaftar dan membuat dapatannya sendiri berdasarkan kepada latar belakang fakta atas kesahan pertikaian akan bererti mahkamah merampas kuasa terhad Pendaftar di bawah s. 16(1). Mahkamah kemudian akan perlu menggantikan pendapat subjektif Pendaftar. Dalam perkataan lain, ia akan mengambil alih peranan Pendaftar, yang mahkamah tidak boleh lakukan. Walau apapun, s. 18C Akta jelas mengecualikan bidang kuasa mahkamah daripada mempersoalkan merit pertikaian antara ahli-ahli parti politik. Dengan itu, mahkamah jelas dihalang daripada mempersoalkan keputusan yang dibuat oleh pihak parti politik yang bertikai di dalam mesyuarat masing-masing.

(4) Pendaftar hanya memberikan SNAP kata dua untuk menyelesaikan pertikaian tersebut atau menghadapi risiko pembatalan di bawah s. 13(1)(c)(ix). Pendaftar yang berpuashati bahawa terdapat ketidakpatuhan terhadap notisnya, boleh bertindak di bawah s. 13(1)(c)(ix) Akta untuk membatalkan pendaftaran SNAP. Walaupun ia adalah pelaksanaan budi bicara oleh Pendaftar, budi bicara tersebut mesti dilaksanakan dalam rangkuman undang-undang. Dalam hal ini, Pendaftar perlu bertindak secara mekanikal dalam linkungan mandatnya di bawah s. 13(1)(c) Akta.

(5) Walaupun budi bicara tersebut adalah mutlak, kenyataan asas adalah bahawa "mahkamah tidak mempersoalkan merit tindakan atau keputusan budi bicara. Mahkamah tidak akan mempersoalkan keputusan budi bicara atas alasan sama ada ia adalah betul atau wajar, benar atau salah. Juga mahkamah tidak akan menggantikan budi bicaranya sendiri dengan pihak berkuasa yang terlibat". Dalam keadaan tersebut, mahkamah tidak bersetuju dengan Mahkamah Rayuan dalam mendapati bahawa Pendaftar telah di dalam keadaan ini bertindak secara sewenang-wenangnya.

(6) Keputusan untuk membatalkan pendaftaran SNAP adalah berikutan kegagalan SNAP mematuhi notis s. 16. Tidak ada keperluan untuk Pendaftar mengadakan apa-apa perbicaraan secara formal sebelum melaksanakan kuasanya di bawah s. 13 Akta kerana ia bukan proses pengadilan kehakiman. Tidak ada keterangan berkaitan niat jahat atau berat sebelah terhadap SNAP apabila Pendaftar bertindak di bawah s. 13(1)(c)(ix). Notis s. 16(1) adalah jelas termanya dan satu-satunya prejudis yang dialami oleh SNAP adalah disebabkan oleh kesilapannya sendiri, iaitu tidak mematuhi syarat-syarat yang dinyatakan di dalam notis tersebut.

(7) Tidak ada merit dalam hujahan responden bahawa keputusan Pendaftar telah menjejaskan hak asasinya di bawah perkara 8 dan 10 Perlembagaan Persekutuan. Ini adalah kerana, pertama, responden tidak pernah memplidkan isu ini dan kedua, kes ini tidak berkait dengan kesetaraan dari segi undang-undang atau kebebasan membentuk pertubuhan. Halperkara berkait hanya dengan kuasa Pendaftar dan keadaan di mana beliau boleh membatalkan pendaftaran sesebuah pertubuhan.

Case(s) referred to:

Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors [2008] 6 CLJ 473 CA ***(refd)***

Council of Civil Service Unions v. Minister for the Civil Service [1985] AC 374 ***(refd)***

Electrical Industry Workers Union v. Registrar of Trade Unions & Anor [1975] 1 LNS 34 FC ***(refd)***

Gasing Meridian Sdn Bhd v. Datuk Bandar Kuala Lumpur [2004] 1 CLJ 219 CA ***(refd)***

Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor [1990] 1 CLJ 44; [1990] 1 CLJ (Rep) 200 SC ***(foll)***

Padfield v. Minister of Agriculture, Fisheries and Food [1968] 1 All ER 694 ***(refd)***

Pendaftar Pertubuhan Malaysia v. PV Das; Datuk M Kayveas (Intervener) [2003] 3 CLJ 404 CA ***(refd)***

Public Services Commission Malaysia & Anor v. Vikneswary RM Santhivelu [2008] 6 CLJ 573 FC ***(refd)***

Rohana Ariffin v. Universiti Sains Malaysia & Another Case [1988] 1 CLJ 559; [1988] 2 CLJ (Rep) 390 HC ***(refd)***

Secretary of State for Education and Science v. Tameside Metropolitan Borough Council [1977] AC 1014

Union of Beverage Industry Workers, Federation of Malaya & Anor v. Syed Shahir Syed Mohamud & Ors [2005] 2 CLJ 883 HC ***(refd)***

Legislation referred to:
Federal Constitution, arts. 8, 10(1)(c)
Societies Act 1966, ss. 3A, 7(2)(c), 13(1)(c)(ix), 13(2), 16(1), (2), 18C, 40(3)

Other source(s) referred to:
MP Jain, *Administrative Law of Malaysia and Singapore,* 2nd edn, p 340

For the appellant - Azizah Nawawi (Amarjeet Singh with her); SFCs
For the respondent - Khoo Guan Huat; M/s Skrine

[Editor's note: For the Court of Appeal judgment, please see Datuk Justine Jinggut v. Pendaftar Pertubuhan [2012] 1 CLJ 825.]

Reported by S Barathi

JUDGMENT

Abdull Hamid Embong FCJ:

Background Facts

[1] The late Datuk Amar James Wong Kim Min and the respondent were at the material time, respectively the duly elected President and Secretary General of Parti Kebangsaan Sarawak ("SNAP"). SNAP was registered as a political society under the Societies Act 1966 ("the Act") on 10 April 1961.

[2] In 2002, a leadership crisis occurred within SNAP between two groups. One group was led by the President, whilst the other was led by the Deputy President, Dato' Sri Peter Tinggom.

[3] Trouble surfaced when the Deputy President, in the absence of the President, convened a Central Executive Council ("CEC") meeting of the party on 29 May 2002. At this meeting, five additional CEC members were appointed and, *inter alia*, it was resolved that it was necessary for a National Council Meeting to be convened and fixed 9 June 2002 as the date for the meeting. However, the National Council Meeting scheduled on 9 June 2002 was aborted due to an injunction issued on the application of the President.

[4] The President had, on 7 June 2002, ie, two days before the National Council Meeting, called for and presided over another CEC meeting comprising of members aligned to him. In the

meeting, they condemned the CEC meeting held on 24 May 2002 that was called and presided by the Deputy President and declared that meeting to be illegal. A

[5] On 22 June 2002, the President suspended the deputy president's membership in SNAP. The suspension was confirmed by another CEC meeting aligned to the President held on 27 June 2002. B

[6] Meanwhile, the injunction taken out by the President was set aside by order dated 9 June 2002. With the injunction set aside, the National Council Meeting as proposed by the group aligned to the Deputy President was held on 23 June 2002. At that National Council Meeting, the President, Vice President, Secretary General, Deputy and Assistant Secretary General were suspended. The Deputy President assumed the post and duties as acting President. C D

[7] With the above development brewing in SNAP, the appellant, ie, Registrar of Societies ("the ROS") on 2 July 2002, issued a notice under s. 16(1) of the Act informing SNAP that he was of the opinion that a dispute had occurred among the office-bearers of SNAP, as a result of which he was not satisfied as to the identities of the persons who had been properly constituted as the office-bearers of SNAP. Hence, SNAP was asked to produce evidence of a settlement of the dispute and of a proper appointment of the lawful office-bearers of SNAP or of the institution of proceedings towards the settlement of the dispute. E F

[8] On 19 July 2002, the respondent responded to the ROS notice stating that the President's group was the lawful office-bearers of SNAP and claimed that the actions taken by the group led by the Deputy President were illegal and *ultra vires* the party's constitution. G

[9] The ROS had also received a reply from the group led by the Deputy President. In the letter dated 26 July 2002, the Deputy President's group defended the legitimacy of their CEC meeting as well as the National Council Meeting held on 23 June 2002 and the decisions taken at those meetings. H

[10] The ROS, by a letter dated 13 September 2002 issued another notice, this time under s. 13(2) of the Act, where a notification on his proposal to cancel the registration of SNAP was given unless SNAP could furnish reasons within one month why it should not be deregistered. I

[11] The President's group replied to the notice in a letter dated 22 September 2002. They reiterated their contention that they were the lawful office-bearers of SNAP and the action taken by the group led by the Deputy President was illegal and *ultra vires* the party's constitution.

[12] Further, in a letter dated 25 September 2002, the President's group informed the ROS that the CEC, which was called by the Deputy President in the absence of the President, was illegal and unconstitutional.

[13] The Deputy President's group also responded to the ROS's notice under s. 13(2) of the Act. In a letter dated 4 October 2002, the Deputy President's group stated that they were the lawful office-bearers of SNAP and instead claimed that the acts done by the President were illegal and unconstitutional.

[14] On 5 November 2002, the ROS issued his decision to cancel the registration of SNAP under s. 13(1)(c)(ix) of the Act.

Proceedings In The High Court

[15] The President and the respondent, after leave being given, filed an application in the High Court seeking, *inter alia*, for the following reliefs:

(i) an order of *certiorari* to quash the decision of the ROS dated 5 November 2002 in cancelling the registration of SNAP; and

(ii) a declaration that the decision of the ROS dated 5 November 2002 in cancelling the registration of SNAP is void and of no effect.

[16] However on 28 November 2005, the President withdrew as a party to the application. The application was proceeded with only by the respondent alone.

[17] Before the High Court, the respondent relied on two main grounds to quash the decision of the ROS, namely:

(i) procedural unfairness;

(ii) substantive unfairness.

[18] On 15 September 2006, the High Court dismissed the respondent's application with costs.

[19] On the first ground, the learned trial judge held that: A

> 18. … the issue of non-disclosure is no longer an issue. I have dealt with this issue in the applicants' earlier application for discovery, where I have accepted the ROS averment that all documents pertaining to his decision making process were before the Court … Hence, the allegation of non-disclosure of documents by the applicant remains a mere allegation. B
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> 19. … Further, I am of the view that the scheme of s. 16 and 13 of the Act does not require the ROS to give the applicant the right to be heard before the ROS is to "to form an opinion that a dispute had occurred or that the ROS was not satisfied of the identity of the persons who have been properly appointed as office bearers". To subscribe to the applicant's submission would tantamount to adding words to the sections which this Court must always "guard itself against adding words which were never intended by Parliament"… C D
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> 21. With respect, I am unable to agree with the applicant. Firstly, it is an established position of law that there is no general duty universally imposed on all decision makers to give reasons for their decision. Secondly, ss. 16(1) and 13 of the Act do not require the ROS to give reasons for his decision. There is no express statutory duty imposed on the ROS to give reasons to the applicant. E

[20] On the second ground, the learned trial judge held that: F

> 25. … The first issue raised by the applicant was that the decision of the ROS to de-register SNAP was disproportionate and too severe a measure to be taken against a society as established as SNAP. My short answer is that, it is not the duty of this Court to substitute its own view as to what is the appropriate or lesser measure ought to be taken by the ROS. G
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> 26. The second and third issues raised by the applicant under this heading is that the ROS had taken irrelevant considerations in arriving to an opinion that a dispute had risen in SNAP and hence had acted in excess of jurisdiction in de-registering SNAP. With respect I am unable to hold as such. The affidavit of the first applicant in support of this application clearly shows the existence of a 'dispute' between the group led by the President and the other group led by the Deputy President. The first applicant in his letter to the ROS confirmed the dispute when he stated that in the absence of the President, another team led by the Deputy H I

President had tried to 'usurp the leadership' by unconstitutional acts such as to convene CEC meeting, National Council Meeting and the EGM. In another exhibit ie, a letter from the other group clearly shows that a parallel CEC led by the Deputy President held a National Council Meeting on 23 June 2002 and had passed several resolutions including the appointment of the Deputy President assuming the post and duties as Acting President and suspending the duties of the President and several others.

27. To me, on the facts of this case is beyond doubt that a dispute does exist within SNAP. Accordingly, the ROS was right to issue the notice under s. 16(1) and subsequently under s. 13(2) of the Act. As the ROS was not furnished with the evidence of settlement of the dispute or institution of proceedings for settlement of the dispute, the ROS was right to cancel the registration of SNAP. To me, what the ROS did was merely complying with the statutory provisions of the Act.

Proceedings In The Court Of Appeal

[21] On appeal, the Court of Appeal on 23 June 2011 allowed the respondent's appeal with costs and set aside the decision of the High Court.

[22] In its judgment, the Court of Appeal held *inter alia* as follows:

We therefore disagree with the learned High Court Judge when he found that "discovery is not relevant because the respondent has averred that all the documents pertaining to his decision-making process are before the court and there is no evidence adduced by the applicant to show that the materials put before the court are inaccurate or false".

This drastic power could not have been contemplated to have existed in a vacuum. It is our view that the discretion given the Respondent in section 16(1) is not unfettered. In scrutinizing the documents before us and the legal position of this appeal, we find that the Respondent had not exercised his discretion in accordance with the law. In fact, in deciding the way he did, in view of the facts before him, we find that his was an arbitrary decision.

In view of the above, it is our view that the Respondent's decision embodied in his letter of notice dated 5.11.2002 purporting to cancel the registration of SNAP was *ultra vires* and void and the Respondent had thus acted in excess of his jurisdiction.

[23] Leave of this court was granted to the ROS on these four questions:

Question 1

Sama ada Pendaftar Pertubuhan mempunyai kuasa di bawah s. 16(1) Akta Pertubuhan 1966 untuk memutuskan kesahihan mesyuarat-mesyuarat pihak-pihak dalam pertikaian sebelum memutuskan terdapat pertikaian mengenai identiti pemegang-pemegang jawatan.

(Whether the ROS has any power under s. 16(1) Societies Act 1966 to determine the validity of the meetings of parties in the dispute before he decided that a dispute had arisen pertaining to identity of the office-bearers.)

Question 2

Sama ada mahkamah, setelah menimbang fakta kes secara objektif, boleh memutuskan bahawa tidak terdapat pertikaian mengenai identiti pemegang-pemegang jawatan bagi membolehkan Pendaftar Pertubuhan untuk mengeluarkan notis di bawah s. 16(1) Akta Pertubuhan 1966.

(Whether the court, having considered the facts of the case objectively, can decide that there is no dispute pertaining to the identity of the office-bearers to enable the ROS to issue the notice under s. 16(1) of Act 335.)

Question 3

Sama ada di bawah s. 16 dibaca bersama s. 13(2) Akta Pertubuhan 1966, Pendaftar Pertubuhan hendaklah bertindak secara mekanikal atau mempunyai budi bicara untuk membatalkan pendaftaran sesuatu pertubuhan sekiranya syarat-syarat di bawah s. 16(1) tidak dipatuhi.

(Whether under s. 16 read with s. 13(2) of Act 335, the ROS needs to act mechanically or does he have any discretion to cancel the registration of a society if the conditions in s. 16(1) have not been satisfied.)

Question 4

Sama ada di bawah s. 16 dibaca bersama s. 13 Akta Pertubuhan 1966, Pendaftar Pertubuhan dikehendaki untuk memberikan alasan-alasan bagi keputusan beliau untuk membatalkan pendaftaran sesuatu pertubuhan sekiranya syarat-syarat di bawah s. 16(1) tidak dipatuhi.

A (Whether, under s. 16 read with s. 13 of Act 335, the ROS is required to give any reasons for his decision to cancel the registration of a society for failing to comply with the requirements of s. 16(1)).

B **Question 1**

[24] It was the contention of the respondent that the first threshold to pass before invoking s. 16(1) of the Act is for the ROS to form an opinion of the existence of a dispute. And this he can only do after examining the facts and circumstances to C determine if a 'real dispute' had arisen. The ROS must thus first decide if there was a valid dispute, and cannot act on a mere allegation; otherwise his opinion cannot be said to be an independent one, and capable of being challenged in court; citing as authority the case of *Secretary of State for Education and Science* D *v. Tameside Metropolitan Borough Council* [1977] AC 1014.

And reference was made to this commentary by MP Jain in *Administration Law of Malaysia and Singapore*, 2nd edn, stating that:

E > When discretion is conferred on an authority, it must personally exercise the same; it must apply its own mind to the facts and circumstances of each case and come to its own decision. If the authority acts without applying its mind to the case before it, then the action or decision taken by it will be bad. In such a situation, the authority is deemed to have failed to exercise its discretion.

F

[25] It was also contended that the failure of the ROS to verify the facts subsequently relied upon by him would run the risk of arriving at an irrational decision, in the sense that the decision can be so "outrageous in its defiance of logic or accepted moral G standards that no sensible person who had applied his mind to the question to be decided could have arrived at it ... (*Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374) ie, the Wednesbury unreasonableness argument.

H **[26]** It was thus submitted that the ROS was duty-bound to inquire into the validity of the meetings leading to the dispute in order to form an opinion whether any dispute really existed. Learned counsel for the respondent added that it is within the power of the ROS to make such inquiries (ss. 3A, 7 and 13 of I the Act were referred to).

[27] On the ouster provision under s. 18C of the Act, it was submitted by the respondent that this will only take effect after any decision made by the political party is found to be valid and authorised by its constitution. Thus it entails the examination by the ROS of the validity of the processes from which those impugned decisions originated including the meetings during which those decisions were made.

[28] In short, the stand taken by the respondent is that s. 16(1) should only be invoked when all of the conditions under that section are satisfied, and that a dispute had in fact occurred. It was thus incumbent upon the ROS to look into all the meetings held by the disputing parties here, in order to determine on the existence of a dispute resulting in the identity of the office-bearers being in doubt.

[29] With respect, we are unable to agree with the stand taken by the respondent. This appeal involves the statutory interpretation of s. 16 and s. 13 of the Act. On a literal interpretation of s. 16(1) of the Act we are of the view that the ROS is not empowered to inquire into the validity of those meetings referred to in order to form an opinion regarding the existence of a dispute. The ROS merely needs to act on the documents presented to him to objectively decide if a dispute had arisen. Once he is satisfied, and here we say on a subjective test, that a dispute had in fact occurred, he may straight away form such an opinion. We say that this is his only statutory duty. The word "opinion" as found in s. 16(1) entails a subjective evaluation by the ROS. It is defined in the Concise Oxford Dictionary as "according to one's view or belief". He forms this opinion based on the documents and information before him. He need not inquire into the meetings to determine if they are in compliance with SNAP's constitution. No detective work is required of the ROS to form this opinion. Otherwise the office of the ROS would be bogged down to make unnecessary inquires each time he is faced with an information of a dispute having occurred in a political society.

[30] Under s. 16(1) of the Act the power given to the ROS is to direct a society to settle its dispute. There is no power to determine if meetings held by the disputing parties are valid or not. The ROS need not make a finding. He merely comes to an opinion of the existence of a dispute. And this he needs to do as quickly as possible. Otherwise, the fate of a society will be left in a limbo, and all its activities suspended. To make inquiries into

A those meeting as suggested by the respondent would delay the whole process. The other rationale stemming out of s. 7(2)(c) of the Act is that any dispute between the parties in a society should, if possible, be determined by the members of that society itself. It provides that the ROS may refuse to register a society
B where the members are in dispute, until, *inter alia*, that dispute is settled by agreement between the parties.

[31] We say that the ROS role is one of non-interference in a dispute situation involving a political society, such as SNAP here.
C This is unlike the situation involving Mutual Benefit Societies under Part II of the Act where the ROS is empowered to hear and determine any disputes (see s. 40(3) of the Act). Section 16(1) of the Act thus has to be given a narrow interpretation limiting the scope of the duty of the ROS to that of only giving
D an opinion to the existence of a dispute and directing that society to settle the dispute by serving a notice to it. And in the event of a non-compliance of that notice the ROS may deregister the society under s. 13(1)(c)(ix) of the Act.

E **[32]** We are in agreement with this remarks made by Raus J (as the PCA was then) in *Union of Beverage Industry Workers, Federation of Malaya & Anor v. Syed Shahir Syed Mohamud & Ors* [2005] 2 CLJ 883, who said:

> In fact there is nothing in s. 16 which states that the Registrar
F shall determine the dispute or adjudicate upon it. It only provides that if the Registrar is of the opinion that a dispute has occurred among members of office bearers, the Registrar may serve notice on the society requiring evidence of settlement of the dispute or
>
> institution of the proceedings for settlement of such dispute.
G According to s. 16(2) if such notice is not complied with, the Registrar within one month or any extension thereof may cancel the registration of the society.

[33] We therefore answer Question 1 in the negative.

H **Question 2**

[34] This question is closely related to the first question which we had answered. The respondent submitted that the court through a process of judicial review, is at liberty to intervene, and
I itself make a finding as to the existence of a dispute on the identity of the office-bearers properly constituted if the manner in which the ROS made his decision was wrong. In other words, the

court is now urged to grant consequential relief instead of merely quashing the decision of the ROS (*Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2008] 6 CLJ 473 was cited in support). A

[35] As we said earlier, s. 16(1) of the Act does not empower the ROS to take the further step of making inquiries into the validity of the meetings to ascertain if a dispute had arisen. B

[36] In our considered view, for the court to go behind the opinion stated by the ROS and make its own finding based on the factual background on the validity of the dispute, this would be usurping the limited powers of the ROS under s. 16(1). The court would then have to substitute the subjective opinion of the ROS. In other words, it would take over the role of the ROS, which we say we cannot do. In *Public Services Commission Malaysia & Anor v. Vikneswary RM Santhivelu* [2008] 6 CLJ 573, it was held that: C D

> From the provisions of the general orders it is *clear that it is never the intention of the legislators that the courts should step into the shoes of the disciplinary authority in deciding* whether it was fair to the respondent to have granted him a right to make oral representations or whether he should be given such right although he did not ask for it. (emphasis added) E

And in *Gasing Meridian Sdn Bhd v. Datuk Bandar Kuala Lumpur* [2004] 1 CLJ 219, Abdull Hamid Mohamed then JCA, said that "It is the Commissioner who has to be satisfied. It is not for the court to be satisfied and then force it on the Commissioner". F

[37] We agree with the learned Senior Federal Counsel, for the ROS who submitted that, in any event, s. 18C of the Act clearly excludes the jurisdiction of the courts from going into the merits of any disputes between members of a political party. Section 18C states that: G

> **Decision of political party to be final and conclusive** H
> 18C. The decision of a political party or any person authorised by it or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and *no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision.* (emphasis added) I

A So clearly the court is restrained from questioning the decisions made by the disputing parties of a political party at their respective meetings. The concluding phrase in s. 18C as we underscored above was considered by the Court of Appeal in *Pendaftar Pertubuhan Malaysia v. PV Das; Datuk M Kayveas (Intervener)* B [2003] 3 CLJ 404, where the court; with which we agree, held that:

> [1] Effect must be given to the intention of Parliament in legislating s. 18C of the Societies Act 1966. In s. 18C, Parliament did not stop at the words "shall be final and C conclusive and ... shall not be challenged, appealed against, reviewed, quashed or called in question in any court". It went further to provide " ... on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such D decision". These words clearly show that Parliament intended to exclude the jurisdiction of the courts. Also, the dispute regarding the validity of the Extra Ordinary Delegates Conference, the election of Datuk M Kayveas and his supporters as President and Office Bearers respectively, the validity of the voting done and the resolutions passed etc, were decisions of a political party on any E matter relating to the affairs of the party within s. 18C.

[38] For the above reasons Question 2 is also answered in the negative.

F **Question 3 And Question 4**

[39] These two questions may be discussed together. Section 13(1) of the Act states that:

> 13. Cancellation and Suspension
>
> G (1) Subject to subsection (2), the Registrar may, in the following cases, cancel the registration of any society registered under section 7 –
>
> (c) if the Registrar is satisfied -
>
> H (ix) that the society has failed to comply with the notice served by him under subsection (1) of section 16.

[40] Learned counsel for the respondent argued that the usage of the word "may" in the opening line of that section necessitates I the ROS to exercise his discretion, meaning that he has to look at the reasons given by a society for its non-compliance before deciding to cancel its registration. As such there is no room for the ROS to exercise his power mechanically.

[41] It was next argued that although the Act is silent on the requirement to furnish reasons for his decision to cancel the registration, the rules of justice under common law demand that reasons be given for all administrative decisions, citing *inter alia*, *Rohana Ariffin v. Universiti Sains Malaysia & Another Case* [1988] 1 CLJ 559; [1988] 2 CLJ (Rep) 390, and *Padfield v. Minister of Agriculture, Fisheries and Food* [1968] 1 All ER 694.

[42] Also, according to learned counsel the action to deregister a society is a decision which adversely affects one's fundamental rights to freedom of association under arts. 8 and 10(1)(c) of the Federal Constitution and that it must thus defer to procedural fairness.

[43] The Court of Appeal made a finding that the ROS had acted arbitrarily in cancelling the registration of SNAP.

[44] It is our considered opinion that s. 16(1) empowers the ROS to direct SNAP to put its house back in order. In other words the ROS merely gives SNAP an ultimatum to settle the dispute or face the peril of cancellation under s. 13(1)(c)(ix). The phrase used in sub-s. (1)(c) is "if the Registrar is satisfied". "Satisfy" as defined in the Concise Oxford Dictionary is to "be certain in one own's mind", meaning that a subjective test is to be applied to the ROS in considering whether there has been compliance with the s. 16(1) notice.

[45] The notice dated 2 July 2002 sent to the Secretary General of SNAP simply states that the party are to take steps to settle the dispute within one month. Section 16(2) of the Act states that:

> 16(2). If any such notice as is provided in subsection (1) is not complied with to the satisfaction of the Registrar within the period of one month or any extension thereof allowed by the Registrar, the Registrar may take steps to cancel the registration of the society under section 13.

[46] Now that the ROS having been satisfied that there has been a non-compliance of his notice, he can act under s. 13(1)(c)(ix) of the Act to cancel the registration of SNAP. Thus, if no evidence of any settlement to the dispute is forthcoming from SNAP and if the ROS is satisfied that there has been a failure to comply with the s. 16(1) notice, then he may cancel the registration of SNAP.

[47] We agree with the respondent that this is an exercise of discretion by the ROS. But in so doing, the statute has provided him only two basis when deciding to deregister SNAP. He cannot consider other matters, as submitted by the respondent, outside the ambit of s. 16(1) and s. 13 of the Act. In that sense his discretion is fettered within the confines of the law. It is not absolute. It is in this regard that the ROS had to act mechanically within his mandate under s. 13(1)(c) of the Act. Now, even if the discretion is an absolute one, the basic proposition is that "the courts do not probe into the merits of a discretionary action or decision. The courts will not question a discretionary decision on such grounds as to whether it was correct or proper, right or wrong. Also the courts will not substitute its own discretion for that of a concerned authority". (see the commentary by MP Jain in *Administrative Law of Malaysia and Singapore* 2nd, edn, p. 340).

[48] In *Electrical Industry Workers Union v. Registrar of Trade Unions & Anor* [1975] 1 LNS 34, a case seeking to declare that the Registrar of Trade Unions has no power to rule on the eligibility of the workers to join the trade union or forbid the trade union from taking the said workers as its members, Lee Hun Hoe CJ (Borneo) gave this advice:

> I think the court must decline to exercise its discretion in making any declaration which would fetter the Registrar in the exercise of his duties imposed upon him by the Ordinance.

[49] With regret, we have to disagree with the Court of Appeal in finding that the ROS had in this instance acted arbitrarily.

[50] On that premise, we answer the third question in the affirmative.

[51] The only basis for cancellation of a society's registration under s. 13 is for non-compliance of a s. 16(1) notice. As earlier stated, and we repeat for emphasis, once the ROS is satisfied on this failure to comply he may, accordingly act, to deregister a society.

[52] The decision to deregister SNAP is merely consequential to the failure of SNAP to comply. Once the conditions stated in the s. 16(1) notice have not been satisfied, the operation of s. 13 is triggered. No reasons are required under the law; no reasons need to be given. The Supreme Court in *Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor* [1990] 1 CLJ 44; [1990] 1 CLJ (Rep) 200 held that "the Minister of Labour is not required to give any reasons when he exercises his discretion …"

[53] There is no requirement for the ROS to conduct any formal hearing before exercising his power under s. 13 of the Act. No presentation of testimony, evidence or arguments are needed. In short, it is not a judicial adjudication process. There is no evidence of any bad faith or bias against SNAP when the ROS acted under s. 13(1)(c)(ix). His action is more administrative than quasi judicial, even though the rights of SNAP were affected. We thus follow the decision of the Supreme Court in *Sanjiv Oberoi* in holding that a reasoned decision is not necessary. The s. 16(1) notice was clear in its terms and the only prejudice suffered by SNAP was due to its own doing, for not complying with the conditions specified in that notice. *Rohana* was a decision of the High Court where it was stated by way of obiter that a reasoned decision can be "an additional constituent of the concept of fairness". It should not be taken as a proposition of the general law guiding the exercise of an administrative decision. Furthermore, that case involved a judicial review of a decision of a disciplinary board, which is a quasi judicial making body.

[54] As regards the argument by the respondent that the ROS's decision had adversely affected his fundamental rights under arts. 8 and 10 of the Federal Constitution, we hold that there is no merit in this stance. Firstly, we observe that this was never the pleaded issue of the respondent. His grounds for seeking reliefs were premised on the Wednesbury unreasonableness and procedural impropriety by ROS in not affording the respondent a reasonable opportunity to be heard. In other words a breach of the *audi alteram partem* principle.

[55] Secondly, this case has nothing to do with equality before the law or on freedom to form associations. The matter before us relates solely to the power of the ROS and the circumstances where he may cancel the registration of a society. This court has been asked to consider if the ROS has correctly applied s. 16(1) and s. 13 of the Act. That's all.

[56] The answer to Question 4 therefore has to be in the negative.

[57] For these reasons, this appeal is allowed with costs. The order of the Court of Appeal is set aside. The High Court order is accordingly restored.